

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4484 of 2015
& M.P.No.1 of 2015

1.C.J.Pushpa Raj
2.S.Arulappa Naidu
3.Fathima Irudiayam
4.C.P.Vijai
5.I.Anupraiya
6.C.P.Santosh

.. Petitioners

Vs.

1.K.B.P.Shankar
2.K.K.V.Seetharaman
3.J.S.Vijayakumar
4.Rajalakshmi Doss
5.V.Subbiah
6.S.Meyyammai
7.P.V.Nagarajan
8.K.Raman
9.R.Padmanabhan
10.R.Varadharajan
11.S.Yegu
12.R.Sundarrajan
13.K.Indira
14.S.Lakshmi
15.M.Rajalakshmi
16.V.Sujatha
17.N.Swaminathan
18.A.Jayaraman
19.Elangovan
20.R.Andhridoss
21.B.Jayachander

- 22.S.Stephen
 - 23.Baby Palliparambai Stephen
 - 24.M.Prabakar
 - 25.M.Julia Sangeeta
 - 26.C.L.Narayana Rao
 - 27.Jayanthi alias Jayanthi Parimala
 - 28.C.L.Mohan Rao
 - 29.N.Mallikarjun
 - 30.R.Damaraj
 - 31.V.N.Krishnasamy
 - 32.Ruth Sheruba Draviaraj
 - 33.Dr.Philip G.Bauliah
 - 34.K.Siva Kumar
 - 35.G.B.Nandakumar
 - 36.Suryanarayanaa Malappka
 - 37.M.Manoharan
 - 38.S.Rajathi
 - 39.P.Chidambara Gurukkal
 - 40.R.Kalpana
 - 41.I.Eugene Edward
 - 42.Vinnu Kumar
 - 43.Jyothi
 - 44.Lakshmi
 - 45.Murali Krishnan Kuchelan
 - 46.Dr.Andrew Bauliah
 - 47.M.C.Venkatesan
 - 48.Hephzibah
 - 49.C.Joseph Suresh
 - 50.C.Regina
 - 51.P.P.Jacqueline Mary
 - 52.S.T.Balasamy
- .. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 17.08.2015 made in I.A.No.327 of 2015 in O.S.No.44 of 2010 on the file of the District and Sessions Court No.II, Kancheepuram.

For Petitioners : Mr.A.Palaniappan
For R1 and R2 : Mr.T.P.Shankaran
for Mr.T.M.Pappiah
For R3 to 52 : Given up

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 17.08.2015 made in I.A.No.327 of 2015 in O.S.No.44 of 2010 on the file of the District and Sessions Court No.II, Kancheepuram.

2. The petitioners are the defendants 17 to 22, respondents 1 and 2 are the plaintiffs, respondents 3 to 18 are the defendants 1 to 16, 19th respondent is the 23rd defendant and respondents 20 to 52 are the defendants 24 to 56 in O.S.No.44 of 2010 on the file of the District and Sessions Court No.II, Kancheepuram. The respondents 1 and 2 filed the said suit for specific performance of agreement of sale. The first petitioner filed written statement on 28.11.2007 and the same was adopted by petitioners 2 to 6 and 23rd defendant also filed written statement and the same was adopted by defendants 24,27,48,49, 53 to 55,30,32,36,40,41,51 and are contesting the suit. Trial commenced. The parties have let in evidence and closed their side.

3. At the time of arguments, the respondents 1 and 2 filed I.A.No.327 of 2015 for amendment of the plaint to correct the survey number with regard to suit schedule property as per the details given in the petition filed in support of the above application. According to the respondents 1 & 2 by inadvertence, the survey numbers are not mentioned correctly. The boundaries and extent are given correctly and the parties have let in evidence with regard to the survey number and extent of the property.

4. The petitioners filed counter affidavit and opposed the said application.

5. The learned Judge, considering the nature of the amendment sought for by the respondents 1 and 2 allowed, the application.

6. Against the said dated 17.08.2015 made in I.A.No.327 of 2015, the present Civil Revision Petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

8. The learned counsel appearing for the petitioners contended that after commencement of trial as per the amended C.P.C., no amendment can be ordered, unless the party seeking amendment alleges and proves that in spite of due diligence, he could not have filed application for amendment before commencement of trial. The petitioners and other defendants have stated in the written statement itself that the property is not correctly described. The learned Judge, without properly appreciating the facts, allowed the amendment which changes the character of the suit. The learned counsel appearing for the petitioners in support of his contention relied on the following judgments:

(i) (2011) 12 Supreme Court Cases 268 (State of Madhya Pradesh Vs. Union of India and Another);

(ii) 2012 (5) CTC 37 (Minor Balakumaran, through his Natural Guardian, next friend and father, Gnanasoundiran Vs. Gunasekaran);

(iii) 2004 (2) CTC 742 (P.Subba Naicker Vs. Veluchamy Naicker and three others);

(iv) (2012) 2 Supreme Court Cases 300 (J.Samuel and Others Vs. Gattu Mahesh and Others)

and submitted that after Amendment Act came into force, no amendment of plaint can be allowed. The respondents 1 and 2 have not exercised the due diligence for filing the application for amendment before the commencement of trial and earlier.

9. Per contra, the learned counsel appearing for the respondents 1 and 2 submitted that the mere delay cannot be the ground for rejection of the application for amendment. The respondents 1 and 2 have given reason for the delay in filing the petition for amendment. The learned Judge has considered all the facts and ordered the amendment. In support of his contention, he relied on the following judgments reported in;

(i) (2005 13 Supreme Court Cases 89) (Sajjan Kumar Vs. Ram Kishan);

(ii) (2008) 4 Supreme Court Cases 102 (Puran Ram Vs. Bhaguram and Another);

(iii) 2009 (4) CTC 37 (Sarathamani Vs. R.C.Chenniappan);

(iv) (2006) 6 Supreme Court Cases 498 (Baldev Singh and Others Vs. Manohar Singh and Another)

10. The contention of the learned counsel appearing for the petitioners that the respondents 1 and 2 have not exercised due diligence for filing application and they have not stated that in spite of due diligence, he could not have filed application for amendment are untenable and without merits. The respondents 1 and 2 have given correct extent of the property. In the survey number given by them, minor discrepancies have crept in. There is no dispute with regard to extent of the land. By correcting the survey number, no new cause of action or new case is introduced or extent of the land is changed. An amendment even after commencement of trial and conclusion of evidence can be ordered in the interest of justice if no prejudice is caused to the other side.

11. In the present case, the respondents 1 and 2 have stated that the parties have conducted the trial based on the boundaries and extent given by them and petitioners and other defendants did not dispute the extent of the property and have cross examined the witnesses with regard to boundaries and extent of the suit property.

12. A reading of the survey number given in the schedule to the plaint and the present petition for amendment would show that

the amendment sought for is for correcting the error crept in the survey number and the S.No.590/A-1 is sought to be amended as S.No.590A/2A/2B/2C, without changing the extent of the property. In such circumstances, the order of the learned Judge ordering the amendment does not suffer any illegality or irregularity warranting interference by this Court. In view of the above, the judgments relied on by the learned counsel for the petitioners are not applicable to the facts of the present case. On the other hand, the judgments relied on by the learned counsel for the respondents are squarely applicable to the facts of the present case.

13. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14. Since the suit is of the year 2010, the learned Judge is directed to dispose of the same as expeditiously as possible, in any event, not later than three months from the date of receipt of a copy of this order.

06.11.2017

Index : Yes/No
dm/rgr

V.M.VELUMANI, J.

dm/rgr

To

The District and Sessions Judge (Court No.II),
Kancheepuram

C.R.P.(PD)No.4484 of 2015
& M.P.No.1 of 2015

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